DOCKET FILE COPY ORIGINAL

ORIGINAL

RECEIVED

FEB 13 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Assessment and Collection	)	
of Regulatory Fees for	)	MD Docket No. 95-3
Fiscal Year 1995	)	
	)	
To: The Commission	)	

COMMENTS OF THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

The Association for Local Telecommunications Services ("ALTS"), pursuant to the Commission's Notice of Proposed Rulemaking in this proceeding released January 12, 1995, FCC 95-14 ("NPRM"), hereby comments on the regulatory fees proposed for Fiscal Year 1995.

I. THE PROPOSED FEE INCREASES WOULD BE A STAGGERING BLOW TO THE EMERGING COMPETITIVE LOCAL EXCHANGE AND ACCESS INDUSTRY.

ALTS has no dispute with the Commission's clear obligation under the Communications Act to increase its regulatory fees for Fiscal Year 1995 by 93% (47 U.S.C.§ 159(g)). Nor is it unreasonable that the Commission would also wish to modify certain elements of its fee structure at the same time it increases its total fee revenues so as to properly reflect the "benefit" conferred by regulation, albeit with the desire to "minimize any adverse impacts to the schedule brought about solely by such a classification change" (NPRM at ¶14).

No. of Copies rec'd 0+4
List ABCDE

Unfortunately, the fees proposed for Fiscal Year 1995 for competitive exchange and access providers in the NPRM totally fail to achieve this goal. The regulatory fees paid by one member of ALTS under the NPRM's proposed schedule would increase by **440,000%**. Furthermore, the proposed schedule would cripple competition by effectively driving up the functional non-recurring costs for all competitive tariffs. Plainly, such a Himalayan jump in regulatory fees and competitive burdens is manifestly inconsistent with the Commission's goal to "minimize" the effect of reclassification.

II. COMPETITIVE PROVIDERS SIMPLY DO NOT BENEFIT FROM "REGULATION."

Beyond the simple mathematical unreasonableness of the proposed fees for competitive access providers, there is also serious confusion in the NPRM about the linkage between the proposed regulatory fees and the "benefits" of regulation. 47 U.S.C. §159(b)(3), (b)(1)(A). It is axiomatic that regulation "benefits" only entrenched providers and their end users. For competitive enterprises, continued monopoly regulation is a burden that benefits neither the company nor its customers.

This fundamental fact was first raised and authoritatively resolved in the Commission's investigation of dominant carrier regulation, Competitive Carrier, 77 F.C.C.2d 308 (1979), in which the Commission ultimately concluded the public interest was best served by not subjecting competitive carriers to the same regulation imposed on dominant carriers. Although the

Commission's legal authority to implement this finding by waiving provisions of the Communications Act of 1934 has been legally challenged (see, e.g., MCI v. AT&T, 114 S.Ct. 2223 (1994); Southwestern Bell v. FCC (slip opinion dated January 20, 1995)), the Commission's underlying determination that regulation does **not** benefit non-dominant carriers remains in full force and effect. Accordingly, there is no basis in this record for now imposing greater fees on competitive access providers because of the alleged "benefits" of regulation.

III. THE REGULATORY FEES PROPOSED FOR COMPETITIVE ACCESS PROVIDERS ARE UNSUPPORTED BY THE CALCULATIONS IN THE NPRM.

The NPRM sets out its proposed fees methodology for the competitive access industry in paragraphs 59 and 60. However, the calculations in those paragraphs do not support the proposed fees. For example, the calculation of 300 million voice-equivalent customer units in footnote 21 is unexplained, and apparently overstated. Furthermore, the underlying assumption in paragraph 59 -- that facilities which carry more than one voice unit should be converted using theoretical voice-grade capacity -- is totally inconsistent with the Commission's recent Transport Rate Restructure and Pricing decision, CC Docket No. 91-219 (released December 22, 1994; ¶54) in which the Commission concluded that a DS3 should be treated as equivalent to 9.6 DS1s. Obviously, the NPRM cannot treat a DS3 as equivalent to 24 DS1s just three weeks after the Transport Rate Restructure decision has been released.

An analogous problem infects the NPRM's calculation of

interstate minutes of use ("MOUs") in paragraph 60. Even assuming that a 10 cents/minute charge were the correct cross-over point for MTS service, the billed revenue amounts are also driven by factors such as service redundancy, service reliability, and other critical considerations in addition to economic cross-over points. Consequently, even if the proposed fees complied with the NPRM's desire to "minimize" the effects of the new fees, and also properly reflected the "benefits" of regulation (which they clearly do not, for the reasons shown above), the proposed amounts are unsupported by the record.

CONCLUSION

The Commission's statutory obligation to increase its overall fees income by 93% is beyond dispute. However, the present proposal would increase regulatory fees for competitive local exchange and access providers by as much as **440,000%** -- a staggering amount which far exceeds the Commission's statutory mandate or any need to "reform" its fees methodology. Such a change is particular unfounded given the benefits competitive providers bring to consumers, and absence of any true "benefit" to this segment of the industry from its continued subjection to dominant carrier regulation.

Competitive access providers should be treated like their competitors, the entrenched local providers, and assessed on the basis of local presubscribed lines. This would better approximate their currently modest role in the relevant market, while

encouraging existing providers to remove the barriers which prevents potential competitors from capturing a larger portion of presubscribed lines.

Respectfully submitted,

ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

By: Richard J. Metzger

Richard J. Metzger
PIERSON & TUTTLE
1200 19th Street, N.W.
Suite 607
Washington, D.C. 20036
(202) 466-3044

Heather Burnett Gold
President
Association for Local Telecommunications Services
1200 19th Street, N.W.
Suite 607
Washington, D.C. 20036
(202) 466-2581

January 13, 1995